THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.21065 OF 1997

DATED: 19th DECEMBER, 2006.

Between :

Toddy Tappers Co-operative Society, Devarakonda,
Group of 5 toddy shops. Rep. by its President
G. Muralender Goud .. Petitioner

And

The Prohibition & Excise Superintendent,
Nalgonda District. .. Respondent

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.21065 OF 1997

ORDER :

This writ petition is filed seeking a declaration that the action of the respondent in demanding payment of rentals for the period of 46 days i.e., from 5-4-1997 to 21-5-1997 as arbitrary and illegal.

It is not in dispute that the petitioner society was granted licence for 5 toddy shops in Devarakonda for the excise year 1993-94 which were renewed from time to time as per the existing excise policy. By proceedings dated 4-4-1997 the licences of the petitioner society were suspended with immediate effect for the alleged violation of Rule 11 of A.P. Excise (Arrack and Toddy Licences General Conditions) Rules, 1969 (for short, 'the Rules'). Questioning the said order, the petitioner preferred an appeal, but the same was dismissed by the Deputy Commissioner of Prohibition & Excise by order dated 3-5-1997. Aggrieved by the same, the petitioner filed W.P.No.10223 of 1997 and this Court granted interim suspension of the impugned order pending the writ petition. Pursuant thereto, the respondent by proceedings dated 15-5-1997 revoked the order of suspension pending W.P.No.10223 of 1997. Consequently, the petitioner society had resumed its business from 21-5-1997. While so, the respondent issued notice dated 31-7-1997 calling upon the petitioner to pay the rentals for the period from 5-4-1997 to 21-5-1997 (46 days) during which the petitioner's licence was suspended. The petitioner submitted a detailed explanation dated 12-8-1997 denying its liability and contending that the licence of the petitioner society was

suspended illegally and therefore they cannot be made liable to pay the licence fee for the said period. Thereafter, the impugned order dated 28-8-1997 came to be passed suspending the licence of the petitioner with immediate effect on the ground that the petitioner committed default in payment of Rs.65,322/- and penal interest of Rs.2,861/- for the period from 5-4-1997 to 21-5-1997. The said order is under challenge in this writ petition.

Heard the learned Counsel for both the parties in detail.

Having considered an identical question, a Division Bench of this Court in TODDY TAPPERS CO-OPERATIVE SOCIETY, PULEKONA GROUP v. STATE OF A.P.[1] held that except in cases falling under Rule 42 of the A.P. Excise (Arrack and Toddy Licences General Conditions) Rules, 1969 the Licensing Authority is competent to collect rentals for the period during which the licence was suspended pending enquiry.

As can be seen Rule 42 of the Rules provides that whenever a licence is withdrawn or a shop is ordered to be closed under the provisions of the A.P. Excise Act, 1968 otherwise than by cancellation or suspension, no demand of rental shall be made for the period during which it was withdrawn or the shop remained closed on account of the orders of the licensing authority. Obviously, Rule 42 of the Rules does not apply to the case on hand since the licences of the petitioner during the period in question were suspended for alleged violation of Rule 11 of the Rules. Though by virtue of the interim order in W.P.No.10223 o 1997 the licences were restored, ultimately the said writ petition was dismissed as infructuous.

It is also relevant to note that in view of the conflicting opinion expressed by another Division Bench in W.A.No.529 of 2003, a Full Bench of this Court in W.P.No.15904 of 1994 considered all the aspects relating to the question whether a licencee is entitled to remission for the period during which his shop was closed and licence was suspended. By Judgment dated 17-3-2005 the Full Bench held

that the licensee is not entitled to any remission of the licence fee paid by him for the period during which his licence stood cancelled or suspended. It was observed that the remission is envisaged only in cases where the licence is withdrawn or shop is ordered to be closed by the competent authority under the provisions of the Act otherwise than by cancellation or suspension of licence.

For the aforesaid reasons, I am unable to hold that the impugned order suffers from any infirmity warranting interference by this Court under Article 226 of the Constitution of India.

Accordingly, the Writ Petition is dismissed. No costs.

However, the petitioner is granted three (3) months time to pay the amounts if any due under the impugned proceedings.

_____

G. ROHINI, J.

Dt. 19-12-2006

gbs

[1] 2004 (3) ALT 392 (DB)